actress the exclusive right to use her picture on posterettes. The defendant thereafter, with the consent of the actress, published and sold posterettes bearing the same picture. *Held*, that an injunction will not be granted. *Pekas* v. *Leslie*, 52 N. Y. L. J. 1864 (N. Y. Sup. Ct.).

For a discussion of the New York statutory right of privacy and the rights involved in the unauthorized use of one's name or picture, see p. 689 of this issue of the REVIEW.

RAILROADS — LIABILITY FOR DAMAGE TO ANIMALS — BREACH OF DUTY TO FENCE. — The defendant railroad was under a prescriptive duty to maintain a fence between its property and the plaintiff's land. By reason of a defect in the fence, the plaintiff's cattle strayed upon the right of way and were killed by a locomotive. *Held*, that the plaintiff may recover. *Titus* v. *Pennsylvania R. Co.*, 92 Atl. 944 (N. J.).

The plaintiff's horse, through the defendant railroad's breach of its statutory duty to maintain a fence, escaped onto the defendant's tracks and was killed by falling off a bridge. *Held*, that the plaintiff may recover. *Davis* v. *Central Vermont Ry. Co.*, 92 Atl. 973 (Vt.).

Under the English common law, and the prevailing view in this country, maintenance of a division fence by one of two adjoining landowners for the prescriptive period subjects him and his successors to a duty to maintain it perpetually. See GALE, EASEMENTS, 8 ed., p. 465; *Binney* v. *The Proprietors of the Lands in Hull*, 5 Pick. (Mass.) 503. *Castner* v. *Riegel*, 54 N. J. L. 498, 24 Atl. 484. But see *contra*, *Wright* v. *Wright*, 21 Conn. 329, 344; *Glidden* v. *Towle*, 31 N. H. 147, 169. Though generally called a "spurious easement," this obligation might more accurately be described as a prescriptive covenant running with the land. A breach of the obligation renders the owner of the servient land liable to the owner of adjoining land for all damage proximately ensuing from the breach. See GALE, EASEMENTS, 8 ed., p. 465; *Lawrence* v. *Jenkins*, L. R. 8 Q. B. 274. Civil liability for violation of a criminal statute imposing affirmative duties is not so sweeping; it exists only where the harm was clearly one which the statute was designed to prevent. See *Gorris* v. *Scott*, L. R. 9 Ex. 125; 27 HARV. L. REV. 317, 335. Accordingly, where a fencing statute expressly allowed recovery for injury caused by "agents, engines or cars" of the railroad, recovery for other kinds of injury was held to be excluded by implication. See *Schertz* v. *Indianapolis, B. & W. Ry. Co.*, 107 Ill. 577. One section of the fencing laws of Vermont contains a similar provision; but another section with a different legislative history, reaffirming the duty to fence, contains no reference to civil liability. VT. PUB. STATS. §§ 4453–6. The decision that a fall from the track was one of the things for which this section permits civil recovery seems sound.

RAILROADS — REGULATION OF RATES — STATE REGULATION: NON-COMPENSATORY RATES FOR PASSENGERS OR PARTICULAR COMMODITIES. — A North Dakota statute fixed maximum intrastate rates for the transportation of coal in carload lots. After the statute had been enforced for over a year, it was shown that on one of the railroads in question the receipts from the transportation of coal under the new rates exceeded the cost of transportation, including actual out-of-pocket expense of moving it together with all fixed or overhead expenses apportionable to such traffic, by only $847. On the other road in question the total receipts under the new rates, while exceeding the out-of-pocket costs of moving the traffic, were some $9,000 to $12,000 less than the total costs including fixed and overhead expenses chargeable to the coal traffic. *Held*, that the statute is unconstitutional. *Northern Pacific Ry. Co.* v. *North Dakota*, U. S. Sup. Ct. Off. Nos. 420, 421 (March 8, 1915).

A West Virginia statute prescribed a maximum rate of two cents a mile for

the transportation of passengers within the state. After the rate had been tested by operating under it for two years, it was shown to yield a return only slightly, if at all, in excess of the actual out-of-pocket expense of conducting the service plus the apportioned share of fixed charges attributable to the passenger traffic. *Held*, that the statute is unconstitutional. *Norfolk & Western Ry. Co.* v. *Conley*, U. S. Sup. Ct. Off. No. 197 (March 8, 1915).

For a discussion of the principles involved in these cases see this issue of the REVIEW, p. 683.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — SIZE OF COMBINATION AS A BASIS FOR DISSOLUTION. — The United States brought a bill in equity against the Keystone Watch Case Company charging violations of the first and second sections of the Sherman Anti-Trust Act. It appeared that the defendant had acquired control of about fifty per cent of the industry and that it had since imposed restrictive agreements upon jobbers to whom the product was sold. But no inflation of prices, limitation of production, or other abuse of power was shown. *Held*, that the unfair practices be enjoined, but that the petition for dissolution be dismissed. *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502 (Dist. Ct., E. D., Pa.).

Since the decree by the federal district court in Minnesota dissolving the International Harvester Company, and pending the appeal to the United States Supreme Court, a number of opinions have been given in coördinate courts that display a sharp divergence from the construction laid upon Section 2 of the Sherman Act by that decision. In the principal case three circuit judges adopt the principles to be found in the dissent of Sanborn, J., in the Harvester case, and accept the rule that size alone does not constitute monopoly within the meaning of the Act. See *United States* v. *International Harvester Co.*, 214 Fed. 987, 1002. There must be unreasonable use of power, and actual or threatened injury to the public to warrant dissolution. See 28 HARV. L. REV. 87. In the "fighting ships" case the court dealt with a combination of steamship lines that was using certain unfair methods, but that decree also stopped short of dissolution and simply enjoined the illegal practices. *United States* v. *Hamburgh American S. S. Line*, 216 Fed. 971. In another steamship case the government established that a large consolidation had taken place, but here too the petition for dissolution was dismissed because no one could be found among shippers, competitors, or the general public who was dissatisfied with it, or who could show unreasonable injury therefrom. *United States* v. *American-Asiatic S. S. Co.*, 220 Fed. 230. In any case where the record of a combination is likewise barren of grievances on the part of the public or of individuals, to enforce its dissolution solely on account of magnitude is a step thoroughly hostile to the industrial development of the country.

SPECIFIC PERFORMANCE — PARTIAL PERFORMANCE WITH COMPENSATION — CREATION OF DOWER RIGHT IN STRANGER APART FROM SEISIN OF THE HUSBAND. — An owner of land, whose wife had a statutory interest in the property similar to dower, made a contract to convey to the plaintiff in which the wife did not join. The wife later joined with him in a conveyance to the defendant, who had notice of the plaintiff's claim. The plaintiff now brings a bill for specific performance. *Held*, that the defendant convey such interest as the plaintiff could have acquired from the vendor with suitable abatement from the purchase price, or at his own election, convey the whole. *Williams* v. *Wessels*, 145 Pac. 856 (Kan.).

A release of inchoate dower operates as an extinguishment of the wife's interest. *Witthaus* v. *Schack*, 105 N. Y. 332, 11 N. E. 649; *Chicago Dock Co.* v. *Kinzie*, 49 Ill. 289. See *Tirrel* v. *Kenney*, 137 Mass. 30, 32. Consequently it has been held hitherto that a purchaser with notice who gets a conveyance